



Kenya Power & Lighting Co. Limited v Attorney General & another (Civil Application E253 of 2024) [2024] KECA 893 (KLR) (26 July 2024) (Ruling)

Neutral citation: [2024] KECA 893 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E253 OF 2024**

S OLE KANTAI, JA

JULY 26, 2024

BETWEEN

KENYA POWER & LIGHTING CO. LIMITED APPLICANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

JECHONIAN MUSEMBI 2ND RESPONDENT

(An application for extension of time to lodge and serve the Notice of Appeal and Record of Appeal out of time against the Judgment and Decree of the High Court of Kenya at Nairobi (J. N. Njagi, J.) delivered on 4th April, 2024 in H.C.C.A No. 540 of 2018)

RULING

1. In the Motion brought under various provisions of law including rule 4 The [Court of Appeal Rules, 2022](#) the applicant Kenya Power & Lighting Company Limited prays that time be extended to file Notice of Appeal from the judgment delivered on 4th April, 2024 in Civil Appeal No. 540 of 2018. In grounds in support of the Motion and in a supporting affidavit of Joseph Muchai, the applicant's Legal Officer, it is said amongst other things that a Notice of Appeal ought to have been filed by 19th April, 2024; that after receiving and reviewing the judgment the applicant was dissatisfied by the same and initiated the process of seeking approval to challenge the same; that approval to appeal against the judgment was given on 9th May, 2024 which was after lapse of time for filing Notice of Appeal; that the applicant has an arguable appeal as per an annexed draft Memorandum of Appeal; the applicant has set out as grounds F. and G. of the Motion:

- F. The above judgment is prejudicial to the Applicant herein by reason that it holds the Applicant (as a bonafide complainant) liable for the prosecutor's failure to prosecute a criminal matter arising from a cognizable offence. As well,



it attributed police action on the Applicant, who had no authority or control over them.

G. This judgment disregarded precedent established by this Court, and it would therefore be wrong to shut the Applicant out of court and deny them the right of appeal since the foregoing are substantive and triable issues of law.”

2. The applicant regrets the delay which it says is justifiable and not inordinate.
3. I have seen the impugned judgment where the applicant was found liable for causing the arrest and prosecution of the respondent and damages were awarded against the applicant.
4. I have also seen a letter dated 5th April, 2023 by the applicant’s lawyers to the Deputy Registrar of the High Court asking for copies of proceedings and there is correspondence between the applicant and its lawyers on the issue of filing an appeal. There is also a draft Memorandum of Appeal where 4 grounds of appeal are set out.
5. In a replying affidavit the 1st respondent Jechoniah Musembi says that upon advise by his lawyers the application is meant to delay and drag the justice process as there should be an end to litigation; that there is no plausible or substantive reason given by the applicant for delay; that there was a 5 year delay in prosecuting the appeal at the High Court; that he filed suit in 2012, judgment was delivered in his favour in 2018 and he is yet to realise the fruits of the judgment, amongst other things.
6. I have seen written submissions by the applicant but I have not seen any from the respondents.
7. The principles that apply in consideration of an application of this nature are well known and were summarized in the case of *Fakir Mohamed v Joseph Mugambi & 2 Others* [2005] eKLR as follows:

“The exercise of this Court’s discretion under Rule 4 has been guided by a consideration of the length of the delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, and the degree of prejudice to the respondent if the application is granted.”
8. Judgment here was delivered on 4th April, 2023. I am told that after reading and reviewing the same certain approvals were necessary before an appeal challenging the judgment could be undertaken. Such approval was given on 9th May, 2024, a period of just after 1 month after judgment had been delivered. I note that the applicant is a public corporation with a board of directors and I ccept that decision in that kind of situation may take a bit of time to be made.
9. The period of delay is not inordinate and the reason given for delay is well explained. I note that steps were taken immediately after judgment including a request for proceedings which was applied for the same date when judgment was delivered.
10. My perusal of draft Memorandum of Appeal shows that there are reasonable grounds to be argued on appeal.
11. The 1st respondent complains that he is prejudiced because he has not enjoyed the fruits of judgment for several years. My view of this is that it is better that all issues in contention be finally settled in the appeal.
12. I allow the Motion. Let the applicant lodge Notice of Appeal within Seven (7) days of today. Costs of the Motion will be in the appeal.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JULY, 2024.



S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

